

Mr. David Burnham  
New York Times  
1000 Connecticut Ave., NW  
Washington, D.C. 20036

9/12/84

Dear Mr. Burnham,

Thank you for the several stories on the little reported pending amending of FOIA that would almost certainly be corrupted by the CIA into an immunity bath. I speak with considerable personal experience.

In addition to those criticisms of this pending legislation that I have read there are two I do not recall seeing mentioned. One is the virtual certainty that to now prohibited domestic abuses will be encouraged because they will forever be protected from disclosure and the other is the elimination of the great and rarely mentioned public good that has come from FOIA's enabling individuals to act as, in effect, private attorneys general.

Although by statute domestic functions are denied the CIA, President Reagan has, by executive order, given it domestic functions. Its considerable abuses of the past, including in first-amendment areas, are far from exposed. Exemption from FOIA can only encourage it to return to such practices and, unrestrained, extend them further into what those lacking the CIA's sense of dedication to function may regard as police statism.

I am not aware of any public discussion of this possibility and I am not aware of the ACLU or anyone else raising questions about the nullification of law by executive fiat.

If for some time in the early 1970s I had not been willing to persist against great odds and in the face of considerable official mendacity, also highly motivated, as official liars not uncommonly are, as Judge Gesell once said, FOIA as we knew it after its 1974 amending, would not exist. That is what, as the Congressional debates make specific, opened those files that were opened and exposed those domestic abuses that were exposed. Without FOIA - and the legitimate protections it provides for what ought legitimately be exempt from disclosure - the nation would never have known and there never would have been any rectification of those abuses.

Anyone with my experiences with the CIA under FOIA must conclude that it will extend any exemption into a virtually total exemption. If one seeks what it does not want to disclose, there is no lie too demeaning for it, no trick too devious, no misrepresentation too shameful, and even to the courts it does not tell the truth - not even by accident.

From my experience, the major costs to the CIA (and the FBI) from FOIA are deliberately created by it. It stonewalls until dragged into court, when it stonewalls all over again and adds burdensomeness to the requester and itself to burdensomeness to the courts. I have appeals from 1971 requests not yet finally acted upon, 1975 and 1976 requests ignored after the CIA asked for more time, and when after a long period of serious illnesses I asked for a status report on those requests I was first told a series of lies and when I proved them to be lies the CIA blandly informed me that under its regulations it destroys FOIA records two years old. (It told the Congress its backlog was up to three years.) I asked for a copy of those regulations, repeated my request when it was ignored, and the CIA has not sent me any regulation it could torture into any such interpretation.

Most of my requests are for information relating to the JFK assassination and its investigations, certainly matters of considerable public interest however one regards the official investigations. No secret intelligence methods are involved, not many genuinely confidential sources can be involved, there is little likelihood of any real national security involvement, yet the CIA continues to stonewall, after almost a decade. This long delay is hardly attributable to any claimed FOIA backlog.

What is certain is that disclosure will be embarrassing to the CIA because from the outset it had a policy of not helping the Warren Commission, as its records that I published years ago make clear. What is not impossible is that some of the withheld information itself can be embarrassing. One illustration, a matter not disclosed to the Warren Commission, is that Lee Harvey Oswald a) had top secret and crypto clearances as a Marine and b) had no assignment, after training, that was not connected with the CIA.

My first source was a Marine Corps friend of Oswald's who had gone into business, feared retaliation and asked confidentiality. Following up on this I obtained Navy records which confirm the security clearances (not on his personnel records) and one of the assignments to a CIA project in Southeast Asia.

There is no question about the facts. There may be a question of the CIA's having relevant records, as I believe it must and does. Under the pending amending of FOIA this and any and all other CIA information in any way related to that most subversive of crimes, the assassination of a President, will forever be secret.

The CIA has transcripts of Oswald's intercepted conversations in Mexico City. I've examined an enormous number of Warren Commission and CIA records and I've seen no acknowledgement by it that it has these transcripts. Or that it intercepted and taped those conversations, particularly with a supposed KGB assassin. Whether or not those tapes still exist, and I can trace them out of CIA possession and into the United States for you with official documents so complete I can identify the plane and when it left Mexico City and who met it where and when, the transcripts are beyond question and their existence was disclosed recently in other litigation, with the CIA's assent. Under the pending amending, those transcripts will forever be secret.

The 1971 request I refer to above is for the CIA's records on and about me. Based on lies told its general counsel, the CIA got him to deny it had any records on me at all, although it inherited my OSS records from World War II. It never came up, when I proved the lying, with any of the records of my work that was so highly praised when I was in OSS, none of its reports on my public appearances in connection with my books, and nothing at all relating to what I have a prima facie case of - not airtight proof but substantial reason to believe - its interference with my publishing. This, in turn, gets to an unexposed aspect of Watergate. All would be immune, forever secret if this law passes. And nothing like this has been discussed, if considered, by the ACLU or the Congress. (I sent Adler of the ACLU the CIA's record showing that it had lied and that it had withheld located relevant information so that its general counsel would lie and the embarrassing information would be withheld and he's been silent. He did not ask for anything else or comment on that.)

I illustrate how the CIA deliberately escalates all costs (thus abusing the requester and his counsel in particular), how it knowingly and deliberately lies to the courts and, by example, how it has created its backlog and magnified its own costs with a recent example, the last such request made of me. Jim Lesar, counsel for that plaintiff, has also represented me in a number of FOIA cases, including the one over which Congress amended the investigatory files exemption in 1974. He sent me a copy of a record the CIA had been forced to disclose, having disclosed it earlier, after it made and swore to a series of falsehoods in that litigation.



I was not able to rewrite and condense the affidavit I provided him and I rushed because I did not know if he had any immediate need for it in that litigation. I intend this also to illustrate the great costs that accumulate from spurious claims by the CIA, and within my experience this is a typical illustration, to illustrate how knowingly false its many claims to "national security," which most judges and requesters cannot confront, commonly are, and the real nature of its "predecisional" documents. I think it is important for the country to know, for example, that the CIA knowingly and deliberately underinforms (if not worse) those it says will make decisions based on the "information" it provides.

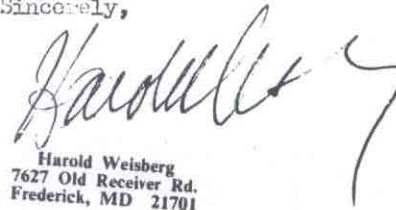
And this, too, would forever be secret under the pending exemption of the CIA's records.

I hope I have not taken too much of your time. I have taken this much of my own time when I now have so little because of impaired health and its requirements, because I sincerely believe that the consequences of this well-greased legislation will be seriously hurtful to the country and is contrary to the most basic of American beliefs.

I realize that some of the things I say may appear to be extreme or exaggerated but I assure you they are not and, if you are interested, I will take the time to send you any documentation of them you may request.

By the way, one detail of this legislation makes it a rich-man's bill. All those who were not able to file suit before February but have requests before it that the CIA ignored, in violation of the law, will be forever foreclosed.

Sincerely,

  
Harold Weisberg  
7627 Old Receiver Rd.  
Frederick, MD 21701

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